**आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में**

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**RAIPUR BENCH "SMC", RAIPUR**

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष**
**BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

**आयकर अपील सं./ITA Nos.164, 165, 166, 167/RPR/2026 and**
**ITA Nos.170 & 171/RPR/2026**
**निर्धारण वर्ष /Assessment Years : 2009-10, 2010-11 & 2012-13**

Boppana Prasad Rao
7-5-99, Flat No.14, Punarvasu Apartments,
Pandurangapuram, Visakhapatnam-530 003 (A.P)
PAN : ADCPB4083D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,
Ward-1(4), Bhilai (C.G)

.....प्रत्यर्थी / Respondent

Assessee by : None (Petition filed)
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 17.03.2026
घोषणा की तारीख / Date of Pronouncement : 17.03.2026

## आदेश / ORDER

## PER PARTHA SARATHI CHAUDHURY, JM

The captioned appeals preferred by the assessee emanates from the respective orders of the Ld.CIT(Appeals)/NFAC, Delhi dated 21.05.2024, 22.05.2024 for the assessment years 2009-10, 2010-11 & 2012-13 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. However, an adjournment petition has been filed which is rejected. The matters are heard after recording the submissions of the Ld. Sr. DR and on a careful perusal of the materials available on record.

3. At the very outset, it is noted that as evident from paras 5.1, 5.2 & 5.3 of the impugned order, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the assessee. For the sake of clarity, the Paras 5.1, 5.2 and 5.3 of the Ld.CIT(Appeals)/NFAC order in ITA No.164/RPR/2026 for A.Y.2009-10 are extracted as follows:

> "5.1 During the course of appellate proceedings, the following notices have been issued and have been delivered to the e-mail address provided as per Form 35 and as per the data available on ITBA record i.e. prasad5310@gmail.com

| S. No. | Date of Hearing Notice | Date of hearing | Date of Hearing |
|---|---|---|---|

| | | | |
|---|---|---|---|
| 1. | 09.01.2021 | 15.01.2021 | The appellant filed written submissions on 13.01.2021 stating that he has opted for Vivad Se Vishwas Scheme, 2020. |
| 2. | 01.12.2023 | 08.12.2023 | No compliance from the appellant/authorized representative of the appellant. |
| 3. | 11.12.2023 | 19.12.2023 | No compliance from the appellant/authorized representative of the appellant. |
| 4. | 22.12.2023 | 01.01.2024 | No compliance from the appellant/authorized representative of the appellant. |
| 5. | 12.01.2024 | 19.01.2024 | No compliance from the appellant/authorized representative of the appellant. |
| 6. | 23.02.2024 | 29.02.2024 | No compliance from the appellant/authorized representative of the appellant. |
| 7. | 10.04.2024 | 18.04.2024 | No compliance from the appellant/authorized representative of the appellant. |

> 5.2 In view of the above, except for two instances i.e. on 13.01.2021 & 23.07.2022, there is no compliance from the appellant to any of the recent notices issued. It is clearly evident that the appellant is not interested in prosecuting the appeal. In this regard, it is pertinent to note that the Hon'ble Supreme Court in the case of C.I.T. v. B.N. Bhattacharjee & Anr. (1979) 118 ITR 461 held that appeal does not mean only filing of memo of appeal but also pursuing it effectively. Hon'ble Bombay High Court in the case of M/s. Chemipol Vs. Union of India in Excise Appeal No. 62 of 2009 dated 17.09.2010 held that in cases where assesses do not want to pursue the appeal court/tribunal had inherent power to dismiss the appeal for want of prosecution. Similarly, the Hon'ble Delhi Tribunal in the case of Multiplan India( P) Ltd 38 ITD 320 and Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar Vs. CWT (1997) 223 ITR 480(MP) has held that the appeal filed by the appellant is liable for dismissal for want of prosecution.
>
> 5.3 Accordingly, it is well settled legal position that merely by riling an appeal, it is not possible to adjudicate the matter by the appellate authorities until and unless the assessee effectively prosecute such appeal. In the instant case, as clearly explained at Para No.4.1 above, the assessee has failed to prosecute its appeal as the appellant/AR of the appellant filed any written submission in support of the grounds of appeal."

In so far as appeals of the assessee in ITA Nos.165, 166, 167, 170 & 171/RPR/2026 for A.Ys. 2009-10, 2010-11 & 2012-13 are concerned, it is noted that as per Paras 5.1, 5.2 & 5.3 of the impugned orders, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the assessee. The same are only being referred to and not extracted for the sake of brevity.

4. The Ld. Sr. DR submitted that in these parameters of an ex-parte order being passed, the bench had provided one final opportunity to the assessee to explain the matter on merits before the Ld. CIT(Appeals)/NFAC providing benefit of doubt to the assessee for such non-compliance and in the interest of natural justice, therefore, the matters should be remanded back to the file of the Ld. CIT(Appeals)/NFAC for denovo adjudication as per law in terms with settled principles on the present facts of ex-parte order by the Ld.CIT(Appeals)/NFAC as decided by **ITAT, "Division Bench", Raipur** in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, IT(SS)A Nos. 1 to 6, 8 & 9/RPR/2025, dated 20.03.2025.**

5. At this stage, I herein observe that the **ITAT, "Division Bench", Raipur** in the cases of **Collector Mining, Kondagaon Vs. Deputy Commissioner of Income Tax (TDS), ITA Nos. 771, 772, 773, 774, 775, 776 & 777/RPR/2025, dated 12.03.2026** had dealt with similar issue on the same parameters of ex-parte order passed by the Ld. CIT(Appeals)/NFAC and remanded the matter back to the file of the Ld. CIT(Appeals)/NFAC following the order passed in cases of Brajesh Singh Bhadoria (supra), observing as follows:

> "6. We have heard the submissions of the parties herein and analyzed the facts and circumstances in this case. We note that in all these appeals, an ex-parte order has been passed by the First Appellate Authority due to non-

compliance by the assessee. The proceedings before the Ld. CIT(Appeals)/NFAC dates back from 27.01.2021 to 28.10.2025 i.e. nearly 4 years (approx.). Admittedly, reasonable opportunities were provided to the assessee. However, there was no compliance from the assessee on any date of hearing. Further, the Ld. Counsel for the assessee simply submitted that the assessee is a government entity and the facts and issues are squarely covered by the decision of the Hon'ble Apex Court, therefore, non-compliance by the assessee before the Ld. CIT(Appeals)/NFAC does not matter. The Act is very clear about the fact of adjudication by the First Appellate Authority through which such orders should be passed in terms with Section 250(4) & (6) of the Act. Meaning thereby, there must be adjudication on merits by the First Appellate Authority on the entire subject matter. Suppose, if there is no compliance by the assessee nor any evidence have been filed in such case, the First Appellate Authority does not have any option but to pass an ex-parte order. In such scenario, considering the principles of natural justice and the fact that tax payer assessee should be provided benefit of doubt the **ITAT, "Division Bench", Raipur** in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur (supra)** had provided one final opportunity to the assessee to represent the matter on merits before the First Appellate Authority. In the said decision (supra), therein also it was submitted by the Ld. Counsel that the legal issue should be decided by the Tribunal. However, it was held therein that the Tribunal is a statutory authority and emanates from the Act itself and it is therefore not a constitutional authority so to allow any usurp of power of another statutory authority i.e. the Ld. CIT(Appeals)/NFAC.

7. In other words, as per the intent of the legislature the First Appellate Authority has to pass order in terms with Section 250(4) & (6) of the Act and thereafter, the matter if appealed before the Tribunal it would look into the correctness of the decision by the sub-ordinate authorities, whether the law has been correctly applied to the facts of the case while determining the substantive rights and liabilities of the parties. There cannot be any short cut route allowed to the assessee for assailing any legal ground or saying that the matter is squarely covered by the judgment of the Hon'ble Apex Court and get relief from Tribunal even without bothering to comply with the hearing notices before the First Appellate authority. If such practice is allowed, the entire intention of the legislature and the process of adjudication

before the Ld. CIT(Appeals)/NFAC as per the Act will get defeated and as a statutory body, the Tribunal cannot travel beyond the intent of the fiscal statute. The Act is very clear that there has to be compliance by the assessee before the Ld. CIT(Appeals)/NFAC and he must pass orders in terms with Section 250(4) and (6) of the Act and thereafter, the matter if appealed before the Tribunal, it has to be decided on the issues as per law and facts. Since in the present case as discernable from record there was no compliance by the assessee before the First Appellate Authority, we, therefore, refer to our decision in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur (supra)** wherein the same parameters were examined and held that in case of an ex-parte order being passed by the Ld. CIT(Appeals)/NFAC due to non-compliance by the assessee, the matter has to be restored back to the file of Ld. CIT(Appeals)/NFAC and it was not open for the Tribunal to address any issue in absence of any substantive order as per Section 250(4) & (6) of the Act by the Ld. CIT(Appeals)/NFAC which in fact is in the best interest of balancing the scales of justice. The relevant paras are as follows:

"7. We have considered the submissions of the parties herein and analyzed the facts and circumstances involved in all the captioned appeals. After careful perusal of the documents on record, we find that the assessee had assailed the legal ground as aforestated, however, the fact of the matter is that on perusal of the respective orders of the Ld. CIT(Appeals) for all the years before us, it is also evident from Para 3 that there has been no compliance by the assessee before the said authority and as such, an ex-parte order was passed for the concerned years in appeal. Admittedly, as per record, sufficient opportunities had been provided to the assesse, however, there was no compliance by the assessee. In effect, rights and liabilities of the parties herein are yet to be adjudicated substantially at the level of the first appellate authority. Though in the impugned orders, discussion has been done as per material available on record by the Ld.CIT(Appeals) but they are only Form 35, statement of facts, grounds of appeal and the assessment order. However, due to non-compliance by the assessee, there are no submissions, evidence and documents submitted for adjudication by the assessee before the Ld. CIT(Appeals). That as per Para 3 of the Ld. CIT(Appeals) order, there has been no compliance on the part of the assessee for submitting detailed explanations regarding the grounds of appeal for the years under consideration which clearly shows

that the grounds of appeal raised before the first appellate authority has not been substantiated on merits through corroborative evidence /submissions.

8. That in such scenario we are of the considered view that the Income tax Act is within the ambit of welfare legislation which are completely different from that of the penal legislation, therefore, benefit of doubt whenever arises, it has to be interpreted in favour of the assessee tax payer within the parameters of law and facts. There may be circumstances beyond control of the assessee because of which, the assessee may not have been able to represent his case on the given dates of hearing before the Ld. CIT(Appeals). Though it is correct that there was no compliance from the side of the assessee, however, nothing is there on record which suggests any deliberate non-compliance or malafide conduct of the assessee. That further, if one final opportunity is provided to the assessee to represent his case before the first appellate authority, the position of the revenue will also not be jeopardized.

9. Recently, the **Hon'ble High Court of Bombay** in the case of **Vijay Shrinivasrao Kulkarni Vs. Income-tax Appellate Tribunal (2025) 171 taxmann.com 696 (Bom.), dated 04.02.2025** observed that in the case the Assessing Officer had passed an ex-parte order and when the matter went on appeal before the Ld. CIT(Appeals)/NFAC, it had also dismissed the matter ex-parte due to non-compliance by the assessee's authorized representative, when the matter came up before the ITAT, it had failed to address the infirmity regarding the fact that the assessee was not afforded proper opportunity of being heard and the matter was dismissed ex-parte by the Ld. CIT(Appeals)/NFAC which amounted to violation of principles of natural justice, and instead ITAT decided the case on merits, in such circumstances, the Hon'ble High Court of Bombay held that passing of an order on merits by the ITAT even when the impugned order was passed ex-parte amounts to violation of principles of natural justice and accordingly, the said matter was remanded to ITAT for passing a fresh order in accordance with law after hearing the parties. The legal principle as enshrined in the present judgment is crystal clear that the principles of natural justice i.e. the right to be heard is to be provided and accordingly, the matter had to be substantially adjudicated by the appellate authority. Therefore, if the impugned order of the Ld. CIT(Appeals)/NFAC is an ex-parte order, the only recourse in conformity with the aforesaid judicial

pronouncement is to remand the matter back to the file of the Ld. CIT(Appeals)/NFAC for fresh adjudication in terms with the principles of natural justice providing one final opportunity to the assessee.

10. In the aforesaid case, the Hon'ble High Court of Bombay had referred to a judgment of the Hon'ble **Supreme Court** in the case of **Delhi Transport Corporation vs. DTC Mazdoor Union AIR 1999 SC 564**, wherein the Supreme Court inter-alia held that Article 14 guarantees a right of hearing to a person who is adversely affected by an administrative order. The principle of audi-alteram partem is a part of Article 14 of the Constitution of India. In light of such decision, the petitioner ought to have been granted an opportunity of being heard which, partakes the characteristic of the fundamental right under Article 14 of the Constitution of India.

11. The Hon'ble High Court of Bombay in the aforesaid case had referred to a decision of the Hon'ble **Supreme Court** in the case of **Commissioner of Income Tax Madras v. Chenniyappa Mudiliar 1969 1 SCC 591**, wherein the Supreme Court in interpreting the section 33(4) of the Income Tax Act, 1922 has held that the appellate tribunal was bound to give a proper decision on question of fact as well as law, which can only be done if the appeal is disposed off on merits and not dismissed owing to the absence of the appellant. Reverting to the facts of the present case the grounds of appeal were simply filed before the Ld.CIT(Appeals) they were not substantiated or corroborated through submissions and filing of documentary evidences since the assessee had not complied before the Ld.CIT(Appeals) on the dates of hearing. Therefore, as per framework of the Act there must be adjudication on merits by the first appellate authority and one final opportunity be provided to the assessee to represent his matter on merits in the interest of natural justice.

12. There may even be a situation where the Ld. Counsel for the assessee may assail a legal ground before the Tribunal following the decision of the Hon'ble Supreme Court in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)** with a contention that irrespective of the order of the Ld. CIT(Appeals) being ex-parte, the Tribunal may decide the legal issue that has been raised by the Ld. Counsel. In our view, the decision of the Hon'ble Supreme Court in the case of **National Thermal**

**Power Company Ltd. Ltd. Vs. CIT (supra)** provides that any legal issue which goes to the root of the matter and is established through legal principles, the assessee can take up and raise such legal issue at any appellate forum irrespective of whether the assessee had raised such legal issue at the sub-ordinate level or not, however, it always depends on facts and circumstances of each case whether the Tribunal would decide the legal ground or in a case where the question is of natural justice and ex-parte order by the Ld. CIT(Appeals) the Tribunal would remand it back to Ld.CIT(Appeals) providing final opportunity to a bonafide assessee. The Tribunal as the highest fact finding authority must be certain enough that the impugned order before it has been passed on merits and is a speaking order where the assessee has also complied during the process of litigation. In case, where the order of the Ld. CIT(Appeals) itself is ex-parte and some legal ground is raised and if the Tribunal decides such legal ground where in fact principles of natural justice is left unanswered due to the fact that the impugned order before the Tribunal is ex-parte and there was no compliance by the assessee in such scenario the Tribunal would also be usurping the power of the Ld. CIT(Appeals) which is also a statutory authority as per the Act. This is due to the reason that as per framework of the Act, Ld.CIT(Appeals) is the first appellate authority where an appeal by assessee it would be substantially decided through a speaking order by the Ld.CIT(Appeals). When this part is over and either party is aggrieved second appeal lies before the ITAT. Now if for every ex-parte order passed by the Ld. CIT(Appeals), of course due to non-compliance by the assessee, if the Tribunal adjudicates a legal ground, for instance validity of assessment or reassessment order and answers it in favour of the assessee then it would create an easy route for assessee getting redressal from Tribunal even without bothering to comply with hearing notices before the Ld. CIT(Appeals). This would dismantle the structure of the Act which is definitely not the intention of the legislature. Here in this situation, where the benefit of doubt is given to the assessee since he had not complied with the hearing notices before the Ld. CIT(Appeals) which resulted in passing of an ex-parte order by the Ld. CIT(Appeals), in such scenario, as per the scheme of the Act and following the principles of natural justice, the only course of action is to remand the matter back to the file of the Ld. CIT(Appeals) for adjudication on merits providing one final opportunity to the assessee.

> 13. In view thereof, we set aside the respective orders of the Ld. CIT(Appeals) for all the years and remand the same to their file for denovo adjudication on merits. At the same time, we direct the assessee that this being the final opportunity, there must be compliance on merits before the first appellate authority. Needless to say, the Ld. CIT(Appeals) shall provide reasonable opportunity of being heard to the assessee and pass an order in terms of Section 250(4) and (6) of the Act within three months from receipt of this order."
>
> 8. Respectfully following the aforesaid order, on the same parity of reasoning and as per rule of consistency, we set-aside the respective orders of the Ld. CIT(Appeals)/NFAC and remand the matters back to its file for denovo adjudication while complying with the principles of natural justice. At the same time, it is directed that this being the final opportunity, the assessee shall duly comply with the hearing notices from the Ld.CIT(Appeals)/NFAC and represent the matters on merits. The Ld.CIT(Appeal)/NFAC shall consider the submissions of the assessee and accordingly pass speaking order in terms with Section 250(4) & (6) of the Act.
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> 9. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.
>
> 10. In the result, all the appeals of the assessee are allowed for statistical purposes."

6. Respectfully following the aforesaid order, on the same parity of reasoning and as per rule of consistency, I set-aside the respective orders of the Ld. CIT(Appeals)/NFAC and remand the matters back to its file for denovo adjudication as per law while complying with the principles of natural justice. At the same time, it is directed that this being the final opportunity, the assessee shall duly comply with the hearing notices from the Ld.CIT(Appeals)/NFAC and represent the matter on merits. The Ld.CIT(Appeal)/NFAC shall consider the submissions of the assessee and

accordingly pass speaking order in terms with Section 250(4) & (6) of the Act.

7. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

8. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in open court on 17th day of March, 2026.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
**न्यायिक सदस्य/JUDICIAL MEMBER**

रायपुर / Raipur; दिनांक / Dated : 17th March, 2026.
SB, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**एक-सदस्य**" बेंच, **रायपुर** / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, **रायपुर** / ITAT, Raipur